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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/964,144	09/25/2001	R. Matthew Mosley	861452.0001	1699
21832	7590	03/01/2004	EXAMINER	
MCCARTER & ENGLISH LLP CITYPLACE I 185 ASYLUM STREET HARTFORD, CT 06103			MERLINO, AMANDA H	
		ART UNIT	PAPER NUMBER	
			2877	
DATE MAILED: 03/01/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/964,144	MOSLEY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Amanda H Merlino	2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 October 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-62 is/are pending in the application.
- 4a) Of the above claim(s) 11-17, 28-42 and 51-60 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10, 18-27, 43-50, 61 and 62 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>0926</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

***Election/Restrictions***

Newly amended claims 11-17, 28-42, and 51-60 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Claims 11-17, 28-42, and 51-60 are directed to the sample chamber having at least one optically refractive wall to focus the light unto the detector and claims 51-60 directed to a sample chamber having at least one memory. The originally presented invention is directed to the use of multiple light sources.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 11-17, 28-42 and 51-60 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6-7, 9-10, 18-27, 43-44, 46-50 and 61-62 rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hertel et al (6118531).

Hertel et al teach of an apparatus and method for measuring qualities of a substance comprising a sample chamber (1, 2, 3) with a translucent wall for receiving the substance to be measured, at least three radiation sources (4) mounted adjacent to

the sample chamber wherein the first radiation source emits a first modulated beam of light at a first frequency, a second radiation source emits a second modulated beam of light at a second frequency, third radiation source emits a third modulated beam of light at a third frequency unto at least three detectors (5), a processor (6) for evaluating the signals from the detectors and a computer for display purposes. Hertel et al further teaches of modulating the input signals from the radiation sources to reduce the effects of ambient light, which is well known in the art of optical measuring and testing.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 5 and 45 rejected under 35 U.S.C. 103(a) as being unpatentable over Hertel et al (6,118,531).

Hertel et al teach of an apparatus and method for measuring qualities of a substance comprising a sample chamber (1, 2, 3) with a translucent wall for receiving the substance to be measured, at least three radiation sources (4) mounted adjacent to the sample chamber wherein the first radiation source emits a first modulated beam of light at a first frequency, a second radiation source emits a second modulated beam of light at a second frequency, third radiation source emits a third modulated beam of light at a third frequency unto at least three detector (5), a processor (6)for evaluating the signals from the detectors and a computer for display purposes. Hertel et al further

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teaches of modulating the input signals from the radiation sources to reduce the effects of ambient light, which is well known in the art of optical measuring and testing.

Hertel et al lacks the teaching of an oscillator to modulate the radiation source nor an amplifier to boost the output signal.

Official Notice is taken the use of oscillators for modulation of signals and amplifiers to strengthen output signals are old and well known in the art. See In Re Malcolm 1942C.D.589:543 O.G.440.

Claims 8 rejected under 35 U.S.C. 103(a) as being unpatentable over Hertel et al (6,118,531) in view of Winslow et al (5,489,977).

Hertel et al teach of an apparatus and method for measuring qualities of a substance comprising a sample chamber (1, 2, 3) with a translucent wall for receiving the substance to be measured, three radiation sources (4) mounted adjacent to the sample chamber wherein the first radiation source emits a first modulated beam of light at a first frequency, a second radiation source emits a second modulated beam of light at a second frequency, third radiation source emits a third modulated beam of light at a third frequency unto three detector (5), a processor (6)for evaluating the signals from the detectors and a computer for display purposes. Hertel et al further teaches of modulating the input signals from the radiation sources to reduce the effects of ambient light, which is well known in the art of optical measuring and testing.

Hertel el al lacks the teaching of filter positioned in front of the second detector for separating fluorescence emission intensity from scattered intensities.

Winslow et al teaches of filtering a signal to separate fluorescence emission intensity from scattered intensities.

At the time of the invention, it would have been obvious to one of ordinary skill in the art to implement the teachings of Winslow et al by placing a filter in front of the second detector of Hertel et al's measuring apparatus to separate a fluorescence emission intensity from scattered intensity in order to detect a plurality of qualities of the substance simultaneously which would provide a more versatile and time saving apparatus.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-10, 18-27, 43-50 and 61-62 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

*Papers related to the application may be submitted to Group 2800 by Fax transmission. Papers should be faxed to Group 2800 via the PTO Fax Machine located in Crystal Plaza 4. The form of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CP4 Fax Machine number is:*

**703-872-9306**

If the applicant wishes to send a Fax dealing with a Proposed Amendment for discussion for a phone interview then the fax should:

- 1) Contain either the statement "DRAFT" or "PROPOSED AMENDMENT" on the Fax Cover Sheet; and
  - 2) Should be unsigned by the attorney or agent.
- This will ensure that it will not be entered into the case and will be forwarded to the examiner as quickly as possible.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Examiner Amanda H. Merlino* whose telephone number is (571)272-2421. The examiner can be reached on Mondays and Thursdays only.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-0956.

Amanda H. Merlino *ahm*  
Patent Examiner  
Art Unit 2877  
February 19, 2004/ahm



FRANK G. FONT  
SUPERVISORY PATENT  
EXAMINER